



U.S. Citizenship
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Services

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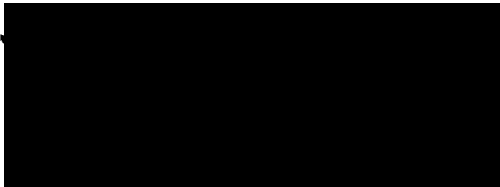


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: AUG 20 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a newspaper publishing company. It seeks to employ the beneficiary permanently in the United States as a political affairs reporter. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the Form ETA 750 and denied the position accordingly.

On appeal, counsel submits a brief.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for granting preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for granting preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The petitioner must demonstrate that the beneficiary is qualified for the position, pursuant to the requirements as stated on the Form ETA 750. Here, the Form ETA 750 states that the proffered position requires a four-year Bachelor of Arts degree in political science. Whether the petition is for a professional pursuant to section 203(b)(3)(A)(ii) of the Act or for a skilled laborer pursuant to section 203(b)(3)(A)(i) of the Act the petitioner must demonstrate that the beneficiary is qualified for the proffered position. 8 C.F.R. § 204.5(l). The petitioner must demonstrate that the beneficiary had the requisite degree as of the priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

With the petition, counsel submitted the beneficiary's transcripts and diploma from [REDACTED] in Seoul, Korea. Those documents show that the beneficiary received a Bachelor of Arts degree in philosophy on February 23, 1988. Counsel submitted a transcript from the University of [REDACTED] at San Diego showing that the beneficiary had acquired 25 credit hours of graduate level political science instruction at that institution from the Fall of 1988 through the Spring of 1989. That transcript does not indicate that the beneficiary received a degree from that institution. Counsel submitted a transcript from Utah State University at Logan, Utah showing that the beneficiary acquired 39 credit hours of graduate level political science instruction from the Fall of 1989 through the Winter of 1991, but was awarded no degree by that institution.

Counsel also submitted the report of an educational evaluator, dated March 9, 1995. The report states that the beneficiary's education is the equivalent of a bachelor's degree in political science from an accredited college or university in the United States.

Because the evidence submitted was insufficient to demonstrate that the beneficiary has a baccalaureate degree in political science, the California Service Center, on January 8, 2003, requested additional evidence.

The Service Center specifically requested evidence that the beneficiary possesses a bachelor's degree in political science.

In response, counsel submitted a copy of the educational evaluation previously submitted, and a copy of another educational evaluation, dated March 6, 2003. The second educational evaluation also states that the beneficiary's political science education is the equivalent of that which one would attain in completing a bachelor of arts with a major in political science at a regionally accredited U.S. college or university.

The director determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree in political science or an equivalent foreign degree, and, on May 21, 2003, denied the petition.

On appeal, counsel asserts that the petitioner has employed the beneficiary in the proffered position since June of 1998. Counsel observes that the beneficiary has received two H-1B nonimmigrant visas permitting that employment without the issue of degree equivalency being raised. Counsel cites 8 C.F.R. § 214.2(h)(4)(iii)(C) as evidence that education equivalent to a bachelor's degree is an acceptable substitute for the bachelor's degree in political science ostensibly required by the Form ETA 750.

Counsel is correct that 8 C.F.R. § 214.2(h)(4)(iii)(C) permits the substitution of equivalent education for a degree. It also permits substitution of experience for a required degree. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C), however, pertains only to nonimmigrant H visas. The instant case involves an immigrant visa pursuant to 8 U.S.C. § 1153(b)(3). The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) is irrelevant to the instant case.

To determine whether a beneficiary is eligible for a third preference visa, CIS must ascertain whether the alien is, in fact, qualified for the certified job. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also *Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

As was noted above, the petitioner submitted the report of a credential evaluator stating that the beneficiary's education at various institutions is the equivalent of a bachelor's degree in political science from a college or university in the United States. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is questionable in any way, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988)

Here, the Form ETA 750 states that one of the requirements for the proffered position is a bachelor's degree in political science. The petitioner has a bachelor's degree in philosophy. The petitioner has neither a U.S. bachelor's degree in political science nor an equivalent foreign degree. The instant petition, submitted pursuant to 8 C.F.R. § 204.5(I), may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.